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IN THE

Supreme Court of the United States

October Term, 1967

No. 1118

SIDNEY ELLIOTT, WINNIE BUCKLIN, MABEL FERGUS and JOHN (BEANS) REARDON, individually and as the Shareholders' Protective Committee of Long Beach Federal Savings and Loan Association, suing on behalf of all of the savings shareholders of said association as a class; and LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, a Federal mutual savings and loan association; and N. JOSEPH ROSS, Intervenor in the District Court,

Petitioners,

vs.

FEDERAL HOME LOAN BANK BOARD, a sue and be sued agency of the United States; FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, a sue and be sued Federal corporation and agency of the United States; SAVINGS AND LOAN COMMISSIONER OF THE STATE OF CALIFORNIA; EQUITABLE SAVINGS AND LOAN ASSOCIATION, a California corporation; JOSEPH FIELDS, a citizen of New York; MARION FIELDS, a citizen of New York and RALPH FIELDS, a citizen of New York.

Respondents.

Petition of Long Beach Federal and Its Shareholders' Protective Committee, Etc., for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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SUBJECT INDEX

	Page
Opinions Below	2
Grounds of Jurisdiction	3
Questions Presented	4, 5
Importance of the Question	4
Constitutional and Statutory Provisions	6
Statement	7
Congressional Committee and the District Court Condemn Bank Board's Retroactive Forfeitures as Arbitrary and Illegal	8
Bank Board's Retroactive Forfeitures Are Imposed to Punish Thousands of Small Savings Depositors Because They Would Not Agree to Forfeitures of Larger Depositors	8
The Court of Appeals Holds United States Courts Without Power to Remedy Invalid and Illegal Forfeitures	10
Bank Board Says Savings Accounts of Over $10,000 Each Are Not Bona Fide Yet 150,000 Such Accounts Exist in Three Other Savings Associations	14
$42,000,000 of New Savings Deposits Were Needed to Help Restore Damaged Savings Association Ruined by Bank Board Seizures and $69,000,000 Run	15
Bank Board Retroactively Forfeits Savings Deposits Months After Deposits Were Made	18
All Long Beach Savings Depositors Vote for Equal and Pro Rata Distribution and Condemn the Bank Board's Forfeitures as Arbitrary and Illegal	20

Page

Long Beach Savings Depositors Vote for Merger in Reliance Upon Bank Board's Provisions for a Court Test of Any Part Thereof 20

Jurisdiction of the District Court 23

Reasons Why the Writ Should Be Granted 24

I.

The Constitutional and Statutory Power of United States Courts to Correct Unconstitutional, Illegal, or Void Administrative Action Is Destroyed Without Discussion 26

II.

Compelling Federal Savings Depositors to Sue Only Before Any Merger Places a Premium on "Strike Suits" 36

III.

The Equitable Rule of Laches Is Misused to Cause Injustice, Instead of to Prevent It 38

IV.

Respondent Bank Board's Language "or Any Part Thereof" Was a Severance Clause Expressly Permitting a Court Test of "Any Part" of the Merger After the Merger Took Place 43

V.

The Court of Appeals Approves Retroactive Forfeitures of Thousands of Innocent Small Federal Savings Depositors' Statutory and Charter Rights Without Findings or Trial and Regardless of Their Guilt or Innocence 45

Conclusion 50

Page

Appendix I. Opinion of District Court and Reference to Opinion of Court of Appeals' Opinion (Not Yet Reported) Appendix "A" to separate petition for Certiorari of Intervenor Ross filed concurrently herewith.

Appendix II. Constitutional and Satutory Provisions Involved.

TABLE OF AUTHORITIES CITED

Cases Page

Abbott Laboratories v. Gardner, 387 U.S. 136, 18 L. ed. 2d 681 (1967) 31, 35

American Seating Co. v. Bullard, 290 Fed. 896 (CA-6, 1923) 41

Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 93 L. ed. 1528 (1949) 36

Commissioner v. Bilder, 369 U.S. 499, 8 L. ed. 2d 65 (1962) 31

Elliott v. Federal Home Loan Bank Board, 233 F. Supp. 578 (1964) (Appendix "I" hereof pages 578-600) .....2, 4, 8, 9, 10, 11, 12, 14, 16, 18, 19 .....21, 27, 31, 32, 33, 38, 43, 46

Federal Home Loan Bank Board et al. v. Sidney Elliott, et al. ..... F. 2d ..... (not yet reported) Appendix "A" to separate petition for certiorari of Intervenor Ross filed concurrently herewith 2, 5, 8, 10, 13, 14, 15, 18, 24, 25, 29, 35, 41, 46

Fahey v. Mallonee, 332 U.S. 245, 91 L. ed. 2030 (1947) 3, 37, 39

Farmers v. United Electrical, etc., 211 F. 2d 36 (CA-DC, 1953) [Cert. Denied 347 U.S. 943, 98 L. ed. 1091] 48

Page

Greene v. United States, 376 U.S. 149, 11 L. ed. 2d 576 (1964) 45

J. I. Case Co. v. Borak, 377 U.S. 426, 12 L. ed. 2d 423 (1964) 40

Jones v. Missouri-Edison Electric Co., 144 Fed. 765 (CA-8, 1906) 41

Krupp v. Federal Housing Administration, 285 F. 2d 833 (CA-1, 1961) 44

Land v. Dollar, 330 U.S. 731, 91 L. ed. 1209 (1947) 34

Lebold v. Inland Steel Co., 125 F. 2d 369 (CA-7, 1941) [Cert. Denied 316 U.S. 675, 86 L. ed. 1749 (1942)] 41

NLRB v. Brown, 380 U.S. 278, 13 L. ed. 2d 839 (1965) 12, 35

Northern P. R. Co. v. Boyd, 228 U.S. 482, 57 L. ed. 931 (1913) 40

R.F.C. v. Sullivan Mining, 230 F. 2d 247 (CA-9, 1956) 44

Schwabacher v. U.S., 334 U.S. 182, 92 L. ed. 1305 (1948) 41

Southern Pacific Co. v. Bogert, 250 U.S. 483, 63 L. 2d 1099 (1919) 40

Sterling v. Constantin, 287 U.S. 378, 77 L. ed. 375 (1932) 36

Tcherepnin v. Knight, October 1967 Term No. 104 (12/18/67), ... U.S. .... 19 L. ed. 2d 564 31

United States v. Baltimore & O. R. Co., 284 U.S. 195, 76 L. ed. 243 (1931) 45

United States v. McCrillis, 200 F. 2d 884 (CA-1, 1952) 45

Statutes — Page

United States Code Annotated, Title 12, Sec. 1464-(a) 6, 32

United States Code Annotated, Title 12, Sec. 1464-(b) 6, 32

United States Code Annotated, Title 12, Sec. 1464-(d) 3, 5, 29

United States Code Annotated, Title 12, Sec. 1464-(d)(1) 6, 34, 35, 40

United States Code Annotated, Title 12, Sec. 1464-(i) 6, 11, 33

United States Code Annotated, Title 5, Sec. 1009 (e) (now United States Code Annotated, Title 5, Secs. 701(a); 704 and 706) 5, 6, 28

United States Code Annotated, Title 5, Sec. 1009 (e) (now United States Code Annotated, Title 5, Secs. 701(a); 704 and 706) 5, 6, 28

United States Code Annotated, Title 5, Secs. 1001-1011 23

United States Code Annotated, Title 12, Sec. 1725 (c)(4) 3, 6

United States Code Annotated, Title 28, Sec. 1254 (1) 4

United States Code Annotated, Title 28, Sec. 1391 (e) 23

California Financial Code, Sec. 5258 ..... 3, 5, 6, 31

California Financial Code, Sec. 9204 6

Federal Rules of Civil Procedure, Rule 52 2

Federal Rules of Civil Procedure, Rule 56 47

Page

Federal Rules of Civil Procedure, Sec. 65(c) 37

California Code of Civil Procedure, Sec. 529 37

Regulations

12 C.F.R. Part 546.4 .....6, 49

Miscellaneous

United State Constitution, Fifth Amendment 6, 23, 48, 51

United States Supreme Court, Rule 23-5 4

1966 Source Book-Federal Home Loan Bank Board 5, 25

34th Annual Report of the Federal Home Loan Bank Board 5, 25, 49

1965 Savings and Loan Fact Book of the United States Savings and Loan League 5, 15, 25

34 Columbia Law Review, Notes, pp. 1308-1331 36

Congressional Investigating Committee Report of Committee on Government Operations 8 15, 16, 21, 29, 30, 31

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FEDERAL HOME LOAN BANK BOARD, a sue and be sued agency of the United States; FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, a sue and be sued Federal corporation and agency of the United States; SAVINGS AND LOAN COMMISSIONER OF THE STATE OF CALIFORNIA; EQUITABLE SAVINGS AND LOAN ASSOCIATION, a California corporation; JOSEPH FIELDS, a citizen of New York; MARION FIELDS, a citizen of New York and RALPH FIELDS, a citizen of New York.

Respondents.

Petition of Long Beach Federal and Its Shareholders' Protective Committee, Etc., for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners[1] pray that Writs of Certiorari issue to review the judgments of the United States Court of Appeals for the Ninth Circuit entered in three consolidated cases before that Court on its August 18, 1967 opinion.

OPINIONS BELOW.

The opinion of the Court of Appeals for the Ninth Circuit was filed August 18, 1967, and is not yet reported. A true copy of said Court of Appeals opinion and judgments is Appendix "A" of the Petition for Certiorari by Intervenor Ross filed concurrently herewith.

The opinion of the District Court (which is also its findings of fact and conclusions of law under F.R.C.P. Rule 52) was filed September 22, 1964. It is reported at 233 F. Supp. 578. A true copy thereof is Appendix I attached hereto.

Parties

[1]Petitioners are Long Beach Federal Savings and Loan Association (Long Beach Federal) and Elliott, *et al.*, as the Shareholders' Protective Committee of Long Beach Federal, and Intervenor Ross.

Long Beach Federal is a *mutual* federal savings and loan association owned solely by its 60,000 savings depositors who are called shareholders.

Elliott, *et al.*, are the Shareholders' Protective Committee of said association holding the proxies of, and representing a majority of, said 60,000 savings depositors. Said Shareholders' Protective Committee was organized 21 years ago in 1946 when Long Beach Federal was first seized by the predecessors of respondents Federal Home Loan Bank Board, *et al.* It has since litigated continuously before courts and Congressional Investigating Committees to save Long Beach Federal from repeated seizures and destructive liquidation by respondents. Said Protective Committee has been continuously licensed by the State of California each year for the past 21 years since 1946. Said

GROUNDS OF JURISDICTION.

An opinion of the Court of Appeals for the Ninth Circuit directing reversal of the judgments below was filed on August 18, 1967. Timely applications for leave to file "Appellees' Petition For Rehearing Or Clarification and Suggestion for Hearing En Banc" were filed on September 14, 1967. An order of said Court of Appeals granting leave to file said petitions for rehearing, etc., was made and filed September 20, 1967.

On November 27, 1967, the Court of Appeals ordered respondent Bank Board to file a response to said Appellee's petition for rehearing. Said response was filed December 26, 1967.

Another order of said Court of Appeals was made on January 12, 1968. It again granted Appellee's leave to file said Petition for Rehearing. It also permitted peti-

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Committee was recognized by this Court 20 years ago in *Fahey v. Mallonee*, 332 U.S. 245, 91 L. ed. 2030 (1947) discussed hereafter at page 39.

Respondents include Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation and California State Savings and Loan Commissioner. Said Insurance Corporation is operated and controlled solely by said Board. Said California Savings and Loan Commissioner is the California regulatory counterpart of said Bank Board. The Commissioner's authority is limited, however, to *only* California State savings and loan associations.

All said respondents are expressly "sue and be sued" agencies. They are subject to suit and judicial review by the respective federal laws creating said Bank Board (12 U.S.C. §1464-(d)) and Insurance Corporation (12 U.S.C. §1725(c)(4)) and the California State law creating Savings and Loan Commissioner (California Financial Code §5258).

Equitable Savings and Loan Association is a California State guarantee stock association. It was a plaintiff in the District Court and an appellee in the Court of Appeals. It is not a petitioner, but is a respondent here.

Intervenor N. Joseph Ross is a savings depositor who intervened in the actions in the District Court and was an appellee. He is filing his separate Petition for Certiorari.

tioner's to reply to said Bank Board's response to petition for rehearing. The order of January 12, 1968 denied said petition for rehearing.[2].

Jurisdiction of This Court on certiorari is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED.

1. UPON A "DISSOLUTION BY MERGER" OF THEIR *MUTUAL* FEDERAL SAVINGS ASSOCIATION MUST THE ASSOCIATION'S SAVINGS DEPOSITORS FORFEIT THEIR FEDERAL STATUTORY AND CHARTER RIGHTS TO EQUAL AND PRO RATA DISTRIBUTION UNLESS THEY FILE "STRIKE SUITS" TO ENJOIN AND WRECK SUCH MERGERS *BEFORE* THEY CAN TAKE PLACE?

OR CAN THEY BE HEARD ON THE MERITS OF THEIR RIGHTS IN U.S. COURT ACTIONS FILED BY THEM ONLY ONE BUSINESS DAY AFTER FINAL APPROVAL OF SAID MERGER BY RESPONDENTS BANK BOARD, *ET AL.*?

Importance of the Question.

The more than twenty million (20,000,000) people who are mutual savings depositors in 2051 federal savings and loan associations own their seventy billion dollars ($70,000,000,000) of savings deposits and as-

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[2]There were three seperate actions in the U.S. District Court. They were consolidated for trial, etc. Three separate judgments were entered by the District Court. The appeals were consolidated for briefing and argument. A single opinion was filed by the Court of Appeals but three separate judgments are required in the Court of Appeals. Pursuant to Rule 23-5 of this Court Petitioners Elliott, *et al.*, and Long Beach Federal are filing a single petition for certiorari and Petitioner Ross is also filing a single but separate Petition for Certiorari. His Petition outlines the procedural steps in each of the three actions.

sets.[3] They have the federal statutory right to "equal and pro rata" distribution of the net assets of their mutual federal savings associations. Such rights are given them by the Acts of Congress authorizing the creation of such federal associations and also by the federal association's charters.

2. ARE U.S. COURT JUDGMENTS WHICH HELD RESPONDENT BANK BOARD'S RETROACTIVE AND *EX PARTE* FORFEITURES WERE "ILLEGAL AND VOID . . . ARBITRARY AND CONTRARY TO, AND WITHOUT AUTHORITY IN, LAW" ENFORCEABLE AGAINST BANK BOARD *ET AL.*, ONLY TO THE EXTENT *IF ANY*, THAT SAID BANK BOARD, *ET AL.*, MAY "APPROVE" SAID U.S. COURT ORDERS?

OR DO THE U. S. COURTS HAVE POWER TO COMPEL RESPONDENTS TO STAY WITHIN THE EXPRESS TERMS OF SAID ACTS OF CONGRESS AND FEDERAL CHARTERS?

Importance of the Question.

Respondents, Federal Home Loan Bank Board, *et al.*, are subject to suit and to judicial review ". . . including declaratory judgments or writ of prohibitory or mandatory injunction . . ." to compel agency action unlawfully withheld.[4] The U.S. District Court only ordered

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[3]Figures are estimates taken from Federal Home Loan Bank Board 1966 Source Book and 34th Annual Report and 1965 Savings and Loan Fact Book of the United States Savings and Loan League.

[4]Administrative Procedure Act, 5 U.S.C. §1009(c) and (e) (now 5 U.S.C. §§704 and 706); Also 12 U.S.C. §1464(d). Respondent California Savings and Loan Commissioner is also ". . . subject to judicial review in accordance with law". California Financial Code §5258 (See pp. 28-31 hereof for texts of said sections).

enforcement of the express terms of the Acts of Congress and petitioners' charter which both require "equal and pro rata distribution."

The Court of Appeals assumed that the forfeitures were invalid (Opn. p. 17). But yet held the U.S. District Court ". . . was without power to remedy [the invalid forfeitures] . . . without the administrative approval required by state and federal statutes and regulations . . ." (Opn. p. 17).

Thus, the constitutional and statutory powers of United States Courts to correct unconstitutional, illegal and void administrative action are destroyed without discussion.

Nowhere in its 21 page opinion does the Court of Appeals cite or discuss the Administrative Procedure Act.

The Court of Appeals gives respondent Bank Board a veto power over every United States trial or appellate court decision affecting the distribution of any federal savings and loan association's reserves and surplus among its thousands of mutual savings depositors.

Constitutional and Statutory Provisions.

1. Amendment 5 United States Constitution
   "No person . . . shall be . . . deprived of life, liberty, or property, without due process of law . . ."
2. Title 12 U.S.C.A. §1464(a); (b); (d)(1) part only; (i)
3. Title 5 U.S.C.A. §1009(c)(e) Now Title 5 US.C.A. §701(a); §704 and §706.
4. Title 12 U.S.C.A. §1725(c)(4) part only
5. 12 C.F.R. Part 546.4
6. California Financial Code §5258; §9204.

For texts see Appendix II hereof.

STATEMENT.

The actions below were brought by petitioners, *et al.*, to save about $9,500,000 of petitioners surplus from certain arbitrary and void forfeitures imposed retroactively by respondents Bank Board, *et al.*, in violation of applicable Acts of Congress and the Federal Charter of petitioner Long Beach Federal [1R-1-28; 2R-7-29; 3R-2-17].[5]

The disputed $9,500,000 was deposited in the U.S. District Court.[6] Respondents thereafter agreed to consent judgments for the distribution of about $7,000,000 thereof among petitioners' 60,000 mutual savings depositors. Such distribution was made pro rata as required by said charter and Acts of Congress. The balance of $2,500,000 remained in Court [1R-204-213; 2R-260-270; 3R-180-190; 1R-316-319; 2R-331-335; 3R-307-311; 3R-167-179].

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[5]For uniformity of record references among all briefs, appellees will use the same record references as in their briefs to the Court of Appeals, *i.e.*, the original papers in No. 20378 (D.C. No. 62-1072-PH), No. 20447 (D.C. No. 63-1230-PH), and No. 20522 (D.C. No. 63-1107-PH) are designated "1R", "2R" and "3R", respectively. References to the transcript of the proceedings in the District Court are designated "Tr." See footnote 10, page 10 hereof for description of how references are made to the opinion of the Court of Appeals and the District Court.

[6]All figures are approximate. The $9,500,000 was in the form of a single certificate for 791,650 shares of Equitable guarantee stock value in 1963 at $9,500,000. See footnote 12, page 11 hereof for details.

Congressional Committee and the District Court Condemn Bank Board's Retroactive Forfeitures as Arbitrary and Illegal.

A Congressional Investigating Committee said of respondent Bank Board's seizures made to block distribution of petitioner's surplus:

> ". . . the Board's . . . actions must be characterized as arbitrary and unlawful and of the most reprehensible sort. . . . by preventing the conversion the board deprived the Association of a right created by . . . Congress . . . Without mincing words, we may say this is a form of regulatory supervision by blackmail. . . . The Board's action was an arbitrary and unlawful exercise of power. . . ."[7]

The District Court also held respondents' retroactive forfeitures were "illegal and void . . . arbitrary and contrary to, and without authority, in law." (233 F. Supp. 578 at p. 598 Appx. I). It ordered enforcement of the Acts of Congress and petitioners charter both of which it held were violated by said forfeitures.

Bank Board's Retroactive Forfeitures Are Imposed to Punish Thousands of Small Savings Depositors Because They Would Not Agree to Forfeitures of Larger Depositors.

Respondent Bank Board for nearly a year threatened to impose its retroactive forfeitures only on petitioners savings accounts of over $100,000 each (233 F. Supp.

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[7]The Congressional Committee had heard the sworn testimony of respondent Bank Board's then Chairman, Members, Counsel and staff. Said Committee's full report is Appendix III to petitioner's briefs in the Court of Appeals.

578 at p. 585 Appx. I). There were about 54 such accounts.

Petitioners refused to agree to the forfeitures. In an effort to coerce agreement, respondent Bank Board refused to permit *any* distribution to *any* of petitioners 60,000 savings depositors regardless of the size or age of their savings accounts.

Petitioners yet refused to yield.

Respondent Bank Board then increased its retroactive forfeitures to include all new savings accounts of over $10,000 each, and all savings accounts which were pledged for a loan anywhere. There were thousands of such savings accounts (233 F. Supp. 578 at p. 585 Appx. I).[8]

Respondent Bank Board's 1963 Chairman McMurray admitted in a letter to petitioner Long Beach Federal that the Board expanded its retroactive forfeitures only because petitioners did not yield to the Board's initial forfeitures.[9]

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[8]The Bank Board gave no notice of any of its retroactive forfeitures until months after the new savings deposits were made (See p. 18 hereof for details)

[9]Board Chairman McMurray said:

> "You persist in saying that the Board is only interested in eliminating accounts of $100,000 and over from participating in the distribution. . . . the $100,000 figure was used only for the purpose of arriving at a mutually agreeable compromise which I thought we had reached . . . You chose not to implement the compromise. That being the case, as you were advised, the Board's concern with the 'free-rider' problem is not limited to accounts of $100,000 and over." (Extract from May 15, 1963 letter from the Board to Long Beach Federal) [Pltf. Exs. 21-41].

The Court of Appeals Holds United States Courts Without Power to Remedy Invalid and Illegal Forfeitures.

The Court of Appeals without considering the legality or merits of any of the retroactive forfeitures, reversed and ordered the actions dismissed. It said:

> ". . . the district court is without power to formulate and enforce a new distribution plan free and clear of Board and Commissioner approval . . ." (CA-9 Opn. p. 20).[10]

The judgment of the District Court was for equal pro rata distribution in the exact terms of the Acts of Congress and petitioners' charter. It was not a new distribution plan. The Court of Appeals held that the U. S. Courts are *without power* to make *any* judgments on the Bank Board's illegal forfeitures, or to enforce Acts of Congress repealed and violated by respondents, except such judgments, if any, as respondents Bank Board, *et al*, might approve.[11]

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[10]References to the Court of Appeals Opinion will be "Opn. p. ...." or "CA-9 Opn. p. ....". Said Court of Appeals opinion is Appendix "A" attached to the petition for certiorari of N. Joseph Ross filed concurrently herewith. References to the District Court opinion will be "233 F. Supp. 578 at p. .... Appx. I". It is Appendix "I" attached to *this* petition for certiorari. All petitioners respectfully request this court to consider both said petitions together. Various statements and contentions made in one are not repeated in the other.

[11]The Court of Appeals assumed that respondent Banks Board's forfeitures were invalid. The Court said:

> ". . . what remedy was available, *assuming that the district court was correct* in determining that the restrictive distribution provisions [forfeitures] . . . *were invalid.* . . ." (CA-9 Opn. p. 17). (emphasis added).

The Court held no remedy existed and said:

> ". . . without reaching the several other complex questions raised on these appeals, the judgments are reversed, and the cases are remanded with directions to dismiss the actions. . . ." (CA-9 Opn. p. 21).

The Court of Appeals also held petitioners *only* recourse against respondents' retroactive forfeitures was to try to enjoin the merger before it took place (CA-9 Opn. p. 21).

But if there were no merger then petitioner's $9,500,000 of surplus could not be distributed among petitioner's 60,000 savings depositors. To enjoin the merger would prevent any distribution.

Respondents' retroactive forfeitures were imposed as conditions of respondents approving a merger of petitioner Long Beach Federal into respondent Equitable (233 F. Supp. 578 at p. 598 Appx. I).

Said $9,500,000 became available for distribution as a result of said merger.[12]

Both Long Beach Federal's charter and the express terms of the Acts of Congress require *equal* and *pro rata* distribution of said $9,500,000 of net worth and surplus of petitioner Long Beach Federal among *all* its 60,000 mutual savings depositors.[13]

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[12]By merger of Long Beach Federal into Equitable, Equitable assumed all Long Beach Federal liabilities. Long Beach Federal's 60,000 savings depositors each received new savings accounts from Equitable. Thus Long Beach Federal's *surplus* was released for distribution in the form of Equitable stock among Long Beach Federal's 60,000 savings depositors. As a result of the merger, each Long Beach Federal savings depositor became a savings depositor in Equitable. His new account in Equitable equalled his old account in Long Beach Federal. There also became available for distribution to Long Beach Federal savings depositors a bonus of about 13% ($9,500,000 at 1963 prices) in the form of Equitable guarantee stock. How this bonus is to be distributed is the issue of this petition.

[13]The District Court found in its opinion:

". . . The second unnumbered paragraph of 12 U.S.C. §1464(i), under which the conversion and dissolution is had, contains the *second* Congressional expression in the Statute as to the distribution of stock upon conversion and

(This footnote is continued on the next page)

Long Beach Federal's charter was issued in 1934 by respondent Bank Board. It reads in part:

> "Section 9: '. . . All holders of share accounts shall be entitled to equal distribution of net assets, pro-rata to the value of their share accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the Association.'" (233 F. Supp. 578 at p. 592 Appx. I).

Yet respondents required unequal and preferential distribution forfeiting some, and favoring others, of petitioner's thousands of mutual savings depositors.

Respondents' forfeitures caused some of the favored depositors to take *all* their own pro rata share and *also* the *entire* forfeited shares of the excluded depositors, who got nothing (233 F. Supp. 578 at p. 593 and p. 597 Appx. I).

Thereby said forfeitures also caused some favored depositors to receive 13 times more distribution than others, where both had the same amounts deposited.[14]

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dissolution. It reads: '(6) *that, in the event of dissolution after conversion, the members or shareholders of the association will share on a mutual basis in the assets of the association in exact proportion to their relative share or account credits.*' This provision is in addition to the specific requirement of subsection (b) *that the shares are to be retired as provided in the charter.* And the charter written, signed and issued by the Government requires a prorata distribution on dissolution." (233 F. Supp. 578 at p. 592 Appx. I).

Such expression of the Congressional policy underlying a statute is discussed in *NLRB v. Brown*, 380 U.S. 278 at 291-292, 13 L. ed. 2d 839 at 849 (1965) (See page 35 hereof for quotations).

[14]The details of such arbitrary preferences were ignored by the Court of Appeals. It held the District Court was without power to remedy them regardless of their invalidity (CA-9 Opn. p. 17).

Respondent Bank Board at the time of said merger (in 1963), had not adopted any regulation controlling a direct merger of a federal savings association, such as petitioner, into a California state guarantee stock association such as Equitable. Respondent Bank Board's 1963 regulations regulated only mergers of federal associations with each other or *liquidation* of federal savings and loan associations. Nevertheless, respondents Bank Board, *et al.*, insisted that no merger of Long Beach Federal with Equitable could take place except on retroactive forfeitures dictated by said Bank Board as conditions of such approval months after the savings deposits were made.

Long Beach Federal's $72,000,000 of savings deposits and Equitable's $51,000,000 of savings deposits were insured by respondent Federal Savings and Loan Insurance Corporation. Both respondent Bank Board and Insurance Corporation threatened petitioners with disapproval of the merger and termination of said deposit insurance unless the merger was upon the terms dictated by said respondents. The terms so dictated included an unequal and preferential distribution of Long Beach Federal's $9,500,000 of net worth among its 60,000 mutual savings depositors. Among the preferences and inequalities demanded by respondents were the exclusion of several thousand Long Beach Federal savings depositors from any participation, and severely limiting and restricting the participation of thousands of others.

Such retroactive forfeitures were imposed by requiring that all new savings accounts of more than $10,000 each be excluded from any share of Long Beach Federal's surplus and that all savings accounts, new and old, shown on Long Beach Federal's books as pledged

also be excluded regardless of the size of the account or the age of the deposit, or the purpose of the pledge.[15]

Respondents Bank Board, *et al.*, thereby forfeited the statutory and charter rights of the excluded mutual savings depositors and transferred said forfeited rights to other favored savings depositors (233 F. Supp. 578 at p. 593 and p. 597 Appx. I).

Bank Board Says Savings Accounts of Over $10,000 Each Are Not Bona Fide Yet 150,000 Such Accounts Exist in Three Other Savings Associations.

Respondents claimed their forfeitures were required to protect "small" savings depositors from "large deposits" made by new depositors and from "large" increases in new savings deposits made by older savings depositors.

Respondent Bank Board told both the District Court and the Court of Appeals:

> ". . . the Board believed that generally *new accounts would not be opened by bona fide savers in amounts larger than $10,000* in any one account." (emphasis added).[16]

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[15]The exclusion of the over $10,000 accounts was as to the excess over $10,000 per account. The exclusion of the pledged accounts was to the extent of the pledge. The exact text of respondent Bank Board's forfeitures appears in the District Court opinion (233 F. Supp. 578 at pp. 585-586 Appx. I).

The retroactive forfeitures were imposed at first only on savings accounts of over $100,000 each. (See footnote 9, p. 9 hereof).

[16]Appellant Bank Board's, et al., Opening Brief, page 17. Appellants also made this assertion under oath to the District Court [McMurray affidavit, 3R-1002]. The Court of Appeals in footnote 13, page 7 of its Opinion, quoted said Bank Board's "belief".

But *all* savings and loan associations throughout the United States average over 31.4% of their savings deposits in accounts of more than $10,000 each.[17]

There were more than 150,511 savings accounts of over $10,000 each in *only three* Los Angeles Associations. The total deposits in said 150,511 savings accounts exceeded one and one-half billion dollars. ($1,500,000,000).[18]

$42,000,000 of New Savings Deposits Were Needed to Help Restore Damaged Savings Association Ruined by Bank Board Seizures and $69,000,000 Run.

Petitioners claimed the new deposits were urgently required to partially restore the depleted assets and baldy damaged goodwill and public esteem of petitioner Long Beach Federal.

Respondents Bank Board, *et al.*, in April 1960 had seized petitioner Long Beach Federal without any notice and appointed their Supervisory Representative in Charge.[19] Respondents sought and obtained front page, scare headline publicity of their said *ex parte*

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[17]"1965 Savings and Loan Fact Book", page 19.

[18]Such data was before the Court of Appeals. It was taken from published newspaper ads and financial statements of said three Associations in the Los Angeles newspapers. Copies of such newspaper ads were part of the "Supplement to Reply Brief of Appellees Long Beach Federal, et al., Paragraph XI Re: Three Los Angeles Savings and Loan Associations have over 150,000 savings Accounts of over $10,000 Each".

[19]A Congressional Investigating Committee has found such Bank Board seizure was arbitrary and unlawful and was made to block a conversion of Long Beach Federal from a federal to a state association. Such conversion was the first step to enable distribution of Long Beach Federal's net worth among its 60,000 savings depositors. (See footnote 7, page 8 hereof for record reference to Congressional Committee Report).

seizure. A run of withdrawals of petitioners' savings depositors began at once. At the start of the run petitioner Long Beach Federal had about $96,000,000 of savings deposits held by over 90,000 mutual savings depositors. Withdrawals in the run were as high as $4,000,000 in a single day. Over $69,000,000 (more than 70%) was so withdrawn (233 F. Supp. 578 at p. 583-585 Appx. I).

In 1962 as a result of Congressional Investigations and Federal Court actions, said respondents returned the remnants of seized Long Beach Federal *to the very same management from which they had seized it* (233 F. Supp. 578 at pp. 583-584 Appx. I).

Respondents paid over $5,000,000 in damages for dismissal of said actions. They also agreed in a "Settlement Agreement"[20] that Long Beach Federal could merge with Equitable and thereby distribute Long Beach Federal's net worth "equally and pro rata" among all Long Beach Federal savings depositors.

When Long Beach Federal was so returned it had less than $30,000,000 left of the original $96,000,000 of savings deposits.

Long Beach Federal was in desperate need of immediate new savings deposits to replace the $69,000,000, 70% of its deposits, lost in the 1960 run.[21]

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[20]The 100-page "Settlement Agreement" is Plaintiff's Exhibit "8". It is discussed at 233 F. Supp. 578 at p. 584, 586, Appx. I.

[21]A prior seizure of Long Beach Federal in 1946-48 by the predecessors of respondent Bank Board had caused a $10,000,000 run of withdrawals (about one-half of the then savings deposits.) This seizure also ended with the return of Long Beach Federal to exactly the same management from which it had been seized by said respondent. A third seizure for the expressed purpose of involuntary liquidation was threatened. It was prevented only by a Federal Court injunction.

Long Beach Federal, Equitable and their respective officers, directors, *et al.*, made every effort to attract *all* new savings deposits to Long Beach Federal by both new and old depositors. Long Beach Federal spent tens of thousands of dollars in repeated full page newspaper ads and for television, radio, etc. About $24,000,000 of such new deposits came on the first and second day after Long Beach Federal was restored from the seizure [Pltf. Exs. 12B-3 thru 12B-17]. The total of such new deposits amounted to $42,000,000 by November 30, 1962. This was only about one-half of the $69,000,000 of savings deposits lost in the run of withdrawals resulting from the 1960-1962 seizure by respondent Bank Board.[22]

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[22]The Court of Appeals said in footnotes 10 and 12 on page 6 of its opinion:

"[10]In its proposed finding of fact No. 28, Long Beach stated:

'28. In March-April, 1962, Long Beach Federal's officers and its Shareholders' Protective Committee wished to rehabilitate the precarious financial condition of the seized Association. They felt substantial new savings deposits were urgently and immediately required for such rehabilitation. The first few days of the restored Association upon its return to its founding management were believed to be the most critical time.'

"...

"[12]As stated in its opening brief on these appeals, Long Beach believes that the deposit of these additional sums were beneficial in the following respects:

"'(a) Equitable paid $3,000,000 in guarantee stock for the goodwill of the restored Association. Said goodwill resulted solely from the new $42,000,000 of savings deposits.

"'(b) The additional $3,000,000 to be impounded for 10 years was released for immediate distribution among the Long Beach Federal depositors. Equitable's assumption of all Long Beach Federal liabilities, known as well as unknown, made this release possible.

(This footnote is continued on the next page)

Bank Board Retroactively Forfeits Savings Deposits. Months After Deposits Were Made.

No savings depositor was ever given any notice *prior* to making his deposits that his new (or old) deposits would be denied their statutory and charter rights to equal and pro rata participation in their mutual association's net worth, surplus and reserves (233 F. Supp. 578 at p. 597 Appx. I).

A Bank Board Member, Bank Board counsel and dozens of Bank Board personnel were personally present in Long Beach Federal in April, 1962, when the premises of the Association were thronged with returning, and new, savings depositors who made over $24,000,000 of new savings deposits in two days. Yet no notice or warning of any kind was given, or ordered by respondent Bank Board of its forfeitures to any of the thousands of new depositors swarming into Long Beach

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"'(c) Approximately $3,884,000 of possible income taxes were saved. The $42,000,000 in new savings deposits under 26 U.S.C. 593 created a tax shelter of 12% or about $5,000,000. This tax shelter enabled Long Beach Federal to received [sic] the $5,000,000 compensation paid it by appellants Bank Board and Insurance Corporation as damages, tax free. The $5,000,000 tax shelter also enabled Long Beach Federal to transfer its surplus to Equitable without taxes which might otherwise have wiped out the distribution.' (Record references and footnotes omitted.)

"In its reply brief the Board took issue with all of these assertions."

But the Court of Appeals never considered or decided whether the $42,000,000 of new savings deposits were required for the survival of Long Beach Federal just emerging from the two years of Bank Board seizure and a $69,000,000 (70%) run of withdrawals. The Court of Appeals assumed the Bank Board's forfeitures were invalid but yet held the District Court was without power to remedy them (CA-9 Opn. p. 17).

Federal to deposit their savings in their restored association.

Only months after the new deposits were made did respondent Bank Board attempt to retroactively forfeit *any* of the new deposits. Even then the proposed retroactive forfeitures were to affect *only* new accounts of *over $100,000* each. There were 54 such accounts.

But when Long Beach Federal refused to betray those of its new depositors whose accounts exceeded $100,000 each, then respondent Bank Board expanded its retroactive forfeitures to include *all* new accounts over *$10,000* each, and to all accounts, old and new, which were assigned or pledged to secure a debt (233 F. Supp. 578 at p. 585 Appx. I).[23] There were thousands of such accounts.

It was almost a year after the $24,000,000 of new savings deposits were made before respondent Bank Board finally announced which of thousands of the new savings accounts would be retroactively forfeited and the extent of such forfeitures.

Respondent Bank Board held no administrative hearing. It made no findings, or even accusations, of any guilt or wrong.

Respondent Bank Board's only findings were that its forfeitures were "advisable and in the interest of all concerned" and were "fair and equitable". Such findings were made without any notice, testimony or hearings [F.H.L.B.B. Order No. 17177; Pltf. Ex. 3-D-4].

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[23]See footnote 9, page 9 hereof.

All Long Beach Savings Depositors Vote for Equal and Pro Rata Distribution and Condemn the Bank Board's Forfeitures as Arbitrary and Illegal.

A mass meeting of Long Beach Federal depositors was held in the Long Beach Municipal Auditorium. Resolutions unanimously adopted by the depositors at that meeting said in part:

> "We condemn as arbitrary, unjust and illegal the attempts of the seizing Bank Board and Insurance Corporation, or their successors, to compel an unconstitutional and illegal forfeiture of our said savings account investors' rights to their proportionate share of our Association's net surplus, reserves, and undivided profits."

Said resolutions also thanked the new large savings depositors for:

> "Investing in new savings accounts or increasing the amounts of existing accounts in amounts in excess of the $10,000.00 insurance of accounts; and
>
> "Also [for] borrowing . . . to obtain money to invest in our mutual savings Association in its time of peril and need immediately following said restoration." [Pltf. Ex. 7-A-2-7].

Long Beach Savings Depositors Vote for Merger in Reliance Upon Bank Board's Provisions for a Court Test of Any Part Thereof.

Resolutions were also unanimously adopted asking Congress to aid the merger. As a result respondent Bank Board's Chairman was questioned in 1963 before Congressional Committees. He then denied any power

to make any distinctions between large and small or old and new federal savings depositors.[24]

He was directed by the Congressional Committee to file a written report on the progress of the Long Beach Federal-Equitable merger. Before making such report to Congress, respondent Bank Board through its Chairman, members, and counsel, originated a new paragraph to be added to the Merger Agreement. It read in part:

> "This Agreement is not intended to prohibit any shareholder member of Long Beach from taking appropriate action to exercise such rights, if any, which he may have to contest the merits or validity of the plan of dissolution of Long Beach, *or any part thereof,* incorporated herein." (emphasis added).

The language *"any* part thereof" was a severance clause. Any part could be accepted. Any other part be contested. See page 43 hereof.

The Court of Appeals quoted said language and held it was ". . . the provision permitting a court test of the distribution provisions" (CA-9 Opn. p. 19). But yet held the only remedy was to enjoin *the entire* merger.

Copies of the Merger Agreement containing such ". . . provision permitting a court test of the distribution provisions" were mailed to all Long Beach Federal depositors. The mass meeting in the Municipal

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[24]The District Court commented (in a footnote in 233 F. Supp. 578 at p. 599 Appx. I) upon said Bank Board Chairman's "trapezical agility to shift, depending on whether or not he was talking to a Congressional Committee, to the public, or to Long Beach Federal. . . ." See footnote 34, pp. 29-31, hereof for details.

Auditorium was resumed in July, 1963. 96% of all the votes cast were in favor of said merger.[25]

Copies of said vote in favor of the merger, including copies of said ballots, were sent to respondents.

Respondent California Commissioner thereafter approved the merger conditionally. One of the conditions was:

> "On or before December 31, 1963, EQUITABLE shall make distribution of the guarantee stock of EQUITABLE to the shareholders of LONG BEACH FEDERAL . . . *subject to the lawful orders of any court of competent jurisdiction* which may otherwise control the distribution of that number of said shares of guarantee stock of EQUITABLE as to which the ownership and entitlement are in dispute." [Pltf. Ex. 3-B-1]. (emphasis added).

Such conditional approval was transmitted to respondents Bank Board and Insurance Corporation. They approved such condition and on September 4, 1963

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[25]The ballots of said 96% read in part:

"This ballot is cast in favor of said merger in reliance upon:

"1. That portion of the merger agreement, proxy statement, etc., which reads as follows:
'This Agreement is not intended to prohibit any shareholder member of Long Beach from taking appropriate action to exercise such rights, if any, which he may have to contest the merits or validity of the plan of dissolution of Long Beach, *or any part thereof*, incorporated herein.', and

"2. The action of the Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, et al., in approving said merger agreement, proxy statement, etc., containing said above quoted language." (emphasis added). [Pltf. Ex. 12-9-63-4].

gave their *final* approval. On September 5, 1963 respondent California Commissioner gave his *final* approval. But a single business day elapsed (*i.e.* Friday September 6, 1963) between the *final* approval by respondents, September 5, 1963, and the filing of petitioners' Court actions in reliance upon and under the terms of the ". . . provision permitting a court test of the distribution provisions."[26]

Yet the Court of Appeals holds petitioners were guilty of "laches" in not suing to wreck and enjoin their entire merger *before* it took place.

Jurisdiction of the District Court.

Petitioners and plaintiffs below in their complaints,[27] cross-claims, etc., based the jurisdiction of the U.S. District Court on the Fifth Amendment to the Constitution of the United States, on the Administrative Procedure Act, 5 U.S.C. §§1001-1011, and upon the other statutes cited by the District Court in its judgments.[28]

Plaintiffs also relied on 28 U.S.C. §1391(e) [1R-3].

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[26]September 7, 1963, was a Saturday; September 8, 1963, was a Sunday; September 9, 1963, was a California Holiday (Admission Day).

[27][1R-1-28; 2R-7-29; 3R-2-17;]

[28]Paragraph I, of said judgments reads:

"That jurisdiction of this court, of the parties and the subject matter exists under the Interpleader and Declaratory Relief Statutes, the Home Owners Loan Act, and the Administrative Procedure Act, all as amended and in force now or on the date of the occurrences involved in this litigation. [28 U.S.C. §§1335, 1397, 2201, 2202, 2361; F.R.C.P. 13, 22, 56(a), 12 U.S.C. 1464(d)(1), 1725(c)(4); and 5 U.S.C. 5]."

REASONS WHY THE WRIT SHOULD BE GRANTED.

The Court of Appeals has erroneously, we believe, decided important federal questions by destroying any effective judicial review of respondent administrative agencies. (including respondents Bank Board *et al.*)[29] Nowhere in the 21 page opinion does the Court of Appeals cite or discuss the Administrative Procedure Act. Such decision is contrary to said Acts of Congress and to the long line of decisions of. This Court thereon. It is also contrary to prior decisions of the same Court of Appeals in prior litigation between petitioners and respondents Bank Board, *et al.* (See p. 31 hereof)

The application of such 1967 Court of Appeals decision is not limited to petitioners. If left uncorrected it will encourage multitudes of similar *ex parte* and retroactive administrative forfeitures.

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[29]The Court of Appeals' opinion at page 17 says:

> "We do not question the power of a district court, in appropriate circumstances, to determine the legality of provisions of a particular merger-distribution plan. We hold, however, that under the circumstances of this case the district court was without power to remedy . . . invalid distribution provisions. . . ."

But the "appropriate circumstances" required by the Court of Appeals can never occur. The opinion holds at page 21:

> ". . . that laches is a bar to these suits, whether the relief sought would or would not require a setting aside of the merger. . . ."

Petitioners' suits were filed the same day as the merger and only *one* business day after *final* approval of the merger by respondents. Enjoining and wrecking a merger before it is made is the *only* remedy the Court of Appeals would permit. This remedy is illustory and non-existent. See pages 36 to 42 hereof for discussion.

Over twenty million (20,000,000) people are mutual savings depositors in 2051 federal savings and loan associations. They own their seventy billion dollars ($70,000,000,000) of mutual savings deposits and assets.[30] They have the federal statutory right to "equal and pro rata" distribution of the net assets of their mutual federal savings associations upon merger or dissolution. Such rights are given them by the Acts of Congress authorizing the creation of such federal associations and also by the federal association's charters.

Under the Court of Appeals' opinion the Bank Board can require unequal and preferential distribution. Thousands of savings depositors can be forfeited and receive no distribution. Others can take their own statutory share and also take the forfeited shares of their fellow savings depositors.

Even before this decision respondents Bank Board *et al.*, in 1966 merged or otherwise dealt with 20 or more savings and loan associations.[31] If the Court of Appeals' opinion remains uncorrected the rights and ownership of *every* federal savings and loan depositor in the 2051 federal associations exist only at the pleasure or whim of respondent Bank Board.

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[30]Figures are estimates taken from Federal Home Loan Bank Board 1966 Source Book and 34th Annual Report and 1965 Savings and Loan Fact Book of United States Savings and Loan League.

[31]34th Annual Report of Federal Home Loan Bank Board to Congress 1966 page 80 and pages 64-65.

I.

The Constitutional and Statutory Power of United States Courts to Correct Unconstitutional, Illegal, or Void Administrative Action Is Destroyed Without Discussion.

The Court of Appeals says in part:

> ". . . the district court was without power to remedy what it regarded as invalid distribution provisions of an administratively approved merger-dissolution plan, by designating a revised distribution plan, without the administrative approval required by state and federal statutes and regulation, . . ." (CA-9 Opn. p. 17).

The Acts of Congress and the Long Beach Federal charter required equal and pro rata distribution. The District Court judgment also ordered equal and pro rata distribution. It merely followed the exact terms of the charter and statute.

The Court of Appeals acknowledged that what it called the "revised distribution plan" enforced by the District Court, was only the *equal* and *pro rata distribution* expressly required by the Acts of Congress, Long Beach Federal's charter, and the Settlement Agreement between petitioners and respondents.

Such acknowledgment was made by the Opinion saying at page 17: ". . . the court-required *pro rata* distribution plan." (emphasis added).

Enforcement by the District Court of the express terms of the Acts of Congress was not "designating a revised distribution plan."

The Court of Appeals also assumed that respondents retroactive forfeitures were invalid. It said at page 17 of its opinion:

"The problem then arises as to what remedy was available *assuming that the district court was correct* in determining that the restrictive distribution provisions of the approved merger agreement were invalid. . . ." (emphasis added).

Respondents contend, and the Court of Appeals held, that *no* remedy was available because, as the Court of Appeals said at page 20 of its Opinion:

". . . the district court is without power to formulate and enforce a new distribution plan free and clear of Board and Commissioner approval. . . ."

Thereby the Court of Appeals constituted respondent administrative agencies as the supreme court of last resort.

Respondents forfeitures were condemned by both the District Court and Congress. The District Court held respondents forfeitures were "illegal and void . . . arbitrary and contrary to, and without authority, in law." (233 F. Supp. 578 at p. 598 Appx. I).

A Congressional Investigating Committee said:

". . . The Board's . . . actions must be characterized as arbitrary and unlawful and of the most reprehensible sort. . . . by preventing the conversion the board deprived the Association of a right created by . . . Congress . . . Without mincing words, we may say this is a form of regulatory supervision by blackmail. . . . The Board's action was an arbitrary and unlawful exercise of power. . . ."[32]

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[32]The Congressional Committee had heard the sworn testimony of respondent Bank Board's then Chairman, members, counsel, and staff. Said Committee's full report is Appx. III to petitioners briefs in the Court of Appeals.

By holding "the district court is without power" to remedy such unlawful action, the Court of Appeals places respondents beyond judicial review. Yet nowhere does the Court of Appeals cite or discuss any of the several statutes subjecting Bank Board to judicial review.

Congress at least twice enacted statutes subjecting respondents to judicial review by the U.S. Courts. The Federal Administrative Procedure Act, reads in part (5 U.S.C. §§1009(c), (e):[33]

> "Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion.
>
> ". . .
>
> "(c) *Acts reviewable.* Every agency action made reviewable by statute and *every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review.*
>
> . . .
>
> ". . .
>
> "(e) *Scope of review.* So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and deter-

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[33]In September, 1966, Congress by Pub. L. 89-554, 80 Stat. 392, revised and re-enacted Title 5 of the U.S. Code. Old §1009 was divided into new sections 701 and 702 through 706. The "Explanation" (page v of 1967 Edition of Title 5) says in part:

> ". . . the enactment . . . did not involve substantive changes in the law, . . ."

The language above quoted became 5 U.S.C.A. 701(a), 704 and 706.

The Opinion of the District Court refers to 5 U.S.C. §1009 as it was numbered up to September, 1967. Hence, we quote it under its old number.

mine the meaning or applicability of the terms of any agency action. It shall (a) compel agency action unlawfully withheld or unreasonably delayed; and (b) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right (4) without observance of procedure required by law; . . ." (Emphasis added.)

As a result of lengthy Congressional Investigations of respondents Bank Board *et al.*, in 1946 and again in 1951-1952, Congress in 1954 amended and revised 12 U.S.C. §1464, the section under which the federal savings system is authorized and created. After such 1954 amendment, 12 U.S.C. §1464(d) reads in part:

". . . The Board shall be subject to suit by any Federal savings and loan association with respect to any matter under this section or regulations made thereunder, or any other law or regulation, in the United States district court for the district where the home office of such association is located."[34]

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[34]The legislative history of this amendment demonstrates that it was enacted for the express purpose of subjecting respondent Bank Board to suits then (1954) pending by petitioner Long Beach Federal. Respondent Bank Boards 1954 Chairman Walter W. McAllister testified before both the House and the Senate Banking and Currency Committees. Part of his testimony is set-forth in Petitioners Appendix III to their brief in the Court of Appeals, pages 24-25 of the "Twenty-Third Report by the Com-

(This footnote is continued on the next page)

As part of such 1954 amendment Congress also enacted:

> "Inconsistent Laws. Section 818 of Act Aug. 2, 1954, [60 Stat. 648.] provided: 'Insofar as the provisions of any other law are inconsistent with the provisions of this Act, the provisions of this Act shall be controlling.'"

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mittee on Government Operations" on "Federal Home Loan Bank Board Seizure of Long Beach Federal Savings and Loan Association". He is there quoted:

> "Chairman McAllister went on to say that in addition to formalizing the administrative machinery, the other purpose of the bill was:[8]
>
> "'. . . to protect the institution and management from the capricious and arbitrary acts of the Board. If the Board were to simply make up its mind it wanted to take a certain action with regard to an institution, they could cause that institution and management considerable embarrassment, if not loss and cessation of business.'
>
> "Then Senator Bennett asked Chairman McAllister to point out the type of issue or disagreement between the Board and the industry which occasioned the new legislation. Chairman McAllister replied:[9]
>
> "'We have a well-known case, that of the Long Beach Federal, Long Beach, Calif.; that has been in the courts for about 7 years, and they have had various kinds of congressional hearings.
>
> "'It is my honest belief that if that statute had been in force at that time, that the difficulty could have been avoided.'"

"[6]Housing Act of 1954, hearings before the Committee on Banking and Currency, U.S. Senate, 83d Cong., 2d sess., on S. 2889, S. 2938 and S. 2949, pt. 1, p. 82.
[7]Ibid. p. 83.
[8]Ibid.
[9]Ibid., p. 84."

In 1963 respondent Bank Board's Chairman McMurray testified twice before Congressional Committees. He was before the House Committee on Appropriations on January 24, 1963 and before the House Committee on Banking and Currency on May 7, 1963. He swore to said committees ". . . that all depositors . . . were treated alike, whether [their deposits were] $100.00 or $100,000.00 and whether pledged or not; . . . or whether their deposits have been in . . . one year, ten years or 20 years.

California statutes also make respondent California Savings and Loan Commissioner's orders re mergers subject to judicial review.[35]

The District Court in its opinion cited and relied upon the above and other statutes subjecting respondents to judicial review.

The Court of Appeals discussed none of them.

Yet in prior litigation between these same petitioners and respondents, the same Court of Appeals has twice, in 1952 and in 1961 cited and discussed the Adminis-

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. . ." (See footnote 4 of 233 F. Supp. at p. 599 Appx. I). But after he so testified, he yet imposed on Long Beach Federal the retroactive forfeitures held invalid by the District Court.

For the decisive effect of such legislative history on the meaning of a statute. See *Tcherepnin v. Knight,* October, 1967, Term No. 104 (12-18-67) ..... U.S. ..... at ....., 19 L. ed. 2d 564 at 571-572. This Court there held savings and loan associations bound by the conduct and testimony of their representatives before committees of Congress and by their public statements as to the effect of such laws.

Commissioner v. Bilder, 369 U.S. 499 at 502-505, 8 L. ed. 2d 65 at 68-69 (1962), and *Abbott Laboratories v. Gardner,* 387 U.S. 136 at 140-141, 18 L. ed. 2d 681 at 686-691 (1967) make similar holdings.

[35]California Financial Code §5258 provides as to respondent California Savings and Loan Commissioner:

> "§5258. *Acts of commissioner subject to judicial review:* . . . Every order, decision, approval, certificate, license, permit, or the denial of any approval, certificate, license or permit, or other official act of the commissioner provided for in Articles 1, 2 and 4 of Chapter 3, Chapter 5, Sections 6450 to 6455, inclusive, and Article 1, Chapter 18, of this division is subject to judicial review in accordance with law. . . ."

Said chapters include those regulating mergers of federal and California savings and loan associations. Respondent California Commissioner said his order approving the merger was ". . . subject to the lawful orders of *any* court of competent jurisdiction which may otherwise control the distribution . . ." of the stock now in Court. (emphasis added) [Pltf. Ex. 3-B-1].

trative Procedure Act and held respondents subject to judicial review.[36]

Congress has also been explicit in requiring mutuality and equal and pro rata distribution in all federal savings associations. 12 U.S.C. §1464(a) authorizes the creation of federal savings associations such as petitioners. It expressly requires that they be mutual and that the charter issued to them be mutual. It reads:

> "In order to provide local *mutual* thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation and regulation of associations to be known as 'Federal Savings and Loan Associations,' and *to issue charters therefor,* giving primary consideration to the best practices of local *mutual* thrift and home-financing institutions in the United States." (emphasis added).

12 U.S.C. §1464(b) requires that all deposits shall be as authorized by the charter and shall be repaid in accordance with the charter terms. It reads in part:

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[36]In 233 F. Supp. 578 at p. 588 Appx. I the District Court said:

> "[7,8] The Administrative Procedure Act is applicable to the Bank Board, and its actions are judicially reviewable, and it does not have 'uncontrolled discretion.' [Home Loan Bank Board et al. v. Mallonee (9 Cir. 1952) 196 F. 2d 336, Cert. den. Mallonee v. Fahey, 345 U.S. 952, 73 S. Ct. 863, 97 L.Ed. 1374; Federal Home Loan Bank Board v. Long Beach Federal Savings & Loan Association (9 Cir. 1961) 295 F.2d 403] . . . Section 10 of the Administrative Procedure Act [5 U.S.C. § 1009], particularly subdivision (c) thereof . . . provides that: 'every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review.'"

> *"Capital: deposits; Certificates of indebtedness*
> "(b) Such associations shall raise their capital only in the form of payments on such shares as are authorized in their charter, *which shares may be retired as is therein provided."* (emphasis added).

The charter issued to Long Beach Federal by respondent Bank Board reads in part in section 9:

> "'. . . All holders of share accounts shall be entitled to *equal distribution* of net assets, *pro-rata* to the value of their share accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the Association'" (emphasis added). (233 F. Supp. 578 at p. 592 Appx. I).

Congress has also enacted its requirements for equal distribution when a Federal savings association converts to a state association. 12 U.S.C. §1464(i) reads:

> ". . . '(6) that, in the event of dissolution after conversion, the members or shareholders of the association will share on a mutual basis in the assets of the association *in exact proportion to their relative share or account credit.*' . . ." (emphasis added)

The District Court by its judgment requiring equal and pro rata distribution only enforced the express requirements of the Acts of Congress. Congress created the Federal savings system. It included in that system requirements for *equal* pro rata distribution when a federal association converted to a state association or liquidated or dissolved.

Respondent Bank Board has repealed these Acts of Congress by requiring preferential and *unequal* distribution, forfeiting thousands of petitioners mutual savings depositors and favoring others.

By such forfeitures one group of favored savings depositors can receive a distribution of many times their statutory pro rata shares. The forfeited savings depositors receive no distribution. Yet both the favored and the forfeited savings depositors had the same amounts on deposit in their respective savings accounts.

Congress also specifically subjected respondents:

> ". . . to suit by any Federal savings and loan association with respect to any matter under this section or regulations made thereunder, or any other law or regulations, in the United States district court for the district where the home office of such association is located, . . .". (12 U.S.C. §1464-(d)).

Congress also said "The provisions of this Act shall be controlling".[37]

Yet the Court of Appeals has held the District Court powerless to review such illegal forfeitures. Thereby respondents' arbitrary and void administrative forfeitures, instead of the Constitution and laws of the United States, are made the supreme law of the land.

In *Land v. Dollar,* 330 U.S. 731, 91 L. ed. 1209 (1947), the United States Maritime Commission attempted to forfeit plaintiffs corporate stock. This Court said at U.S. page 738, L. ed. page 1216:

> ". . . But public officials may become tort-feasors *by exceeding the limits of their authority.* And where they unlawfully seize or hold a citizen's realty or chattels, recoverable by appropriate action at law or in equity, he is not relegated to the Court of Claims to recover a money judgment. The dom-

[37]See Pages 29-31 hereof for full text and legislative history.

inant interest of the sovereign is then on the side of the victim who may bring his possessory action to reclaim that which is wrongfully withheld." (emphasis added).

In *NLRB v. Brown*, 380 U.S. 278, 13 L. ed. 2d 839 (1965), this Court said at U.S. pages 291-292, L. ed. 2d page 849:

> ". . . Reviewing courts are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute. Such review is always properly within the judicial province, and courts would abdicate their responsibility if they did not fully review such administrative decisions. . . .
>
> "[21, 22] Courts must, of course, set aside Board decisions which rest on an 'erroneous legal foundation.'"

In *Abbott Laboratories v. Gardner*, 387 U.S. 136, 18 L. ed. 2d 681 (1967), this Court said at U.S. pages 140-141, L. ed. 2d pages 686-687:

> ". . . a survey of our cases shows that judicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress. (citing authorities) . . . only upon a showing of 'clear and convincing evidence' of a contrary legislative intent should the courts restrict access to judicial review. . . ."[38]

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[38]See footnote 34, pages 29-31 hereof for legislative history of 1954 amendment of 12 U.S.C. §1464(d) enacted to make respondent Bank Board subject to suit and judicial review by petitioners Long Beach Federal, *et al.*

In *Sterling v. Constantin*, 287 U.S. 378, 77 L. ed. 375 (1932), this Court said at U.S. page 404, L. ed. page 388:

> ". . . Complainants had a constitutional right to resort to the Federal court to have the validity of the Commission's orders judicially determined. . . ."

II.

Compelling Federal Savings Depositors to Sue Only Before Any Merger Places a Premium on "Strike Suits".

The Court of Appeals' opinion *requires* and places a premium upon strike suits by minority stockholders-depositors of *all* federal savings and loan associations. Many beneficial mergers have been wrecked by premature and unfounded minority stockholder litigation.

Such strike suits, which the Court of Appeals now holds are the *only* remedy of over twenty million federal savings depositors, are long discredited. They place a premium upon obstructive action and are often used to coerce excessive compromise payments not justified by the merits of the claims.[39]

They have been the subject of much remedial legislation by many of the states.

In *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 93 L. ed. 1528 (1949) the U.S. Supreme Court said at U.S. page 438, L. ed. page 1537:

> "Unfortunately, the remedy itself [stockholders suits] provided opportunity for abuse which was not neglected. Suits sometimes were brought not to redress real wrongs, but to realize upon their

[39]The article on "Extortionate Corporate Litigation: The Strike Suit" appearing in the Columbia Law Review, Notes, Vol. 34, pages 1308-1331, contains discussion, and a multitude of citations *re* strike suits.

nuisance value. They were bought off by secret settlements in which any wrongs to the general body of share owners were compounded by the suing stockholder, who was mollified by payments from corporate assets. These litigations were aptly characterized in professional slang as 'strike suits.' . . ."

The Court of Appeals' opinion holds that enjoining the $159,000,000 merger *before it occurs* was the only remedy available to the thousands of small Long Beach Federal savings depositors. But an injunction to block a $159,000,000 merger requires a bond. (F.R.C.P. §65(c); California Code of Civil Procedure §529). No small savings depositor or any group of them can be expected to meet the requirements of such a bond.

At the time of the merger, Long Beach Federal's assets exceeded $90,000,000. Equitable's assets exceeded $68,000,000. Their combined pro-forma statement shows almost $159,000,000 total assets. Any injunction bond required to indemnify the 60,000 Long Beach Federal savings depositors and 24,000 Equitable depositors and stockholders would threaten to ruin and bankrupt any small Long Beach Federal savings depositors attempting to enjoin such a merger.[40]

The duration of the injunction as this very case demonstrates, would be at least 4 years.[41] The amounts lost

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[40]The injunction against merger obtained in 1946 but reversed as "premature" by This Court in *Fahey v. Mallonee*, 332 U.S. 245, 257, 91 L. ed. 2030 at 2041 (1947) was against only a U.S. conservator who then (in 1946-1948) was in possession of Long Beach Federal under respondents first seizure. Only a nominal injunction bond was required under these circumstances. (See footnote 43, page 39 hereof)

[41]The merger was made September 10, 1963. The District Court actions were filed the same day. The District Court's opinion was rendered in 1964 and its judgment was made in 1965. The Court of Appeals' opinion was filed in August, 1967, Rehearing was denied in January, 1968.

if an injunction prevented the merger and then proved to be wrongful could exceed $10,000,000. ($9,500,000 of Equitable's stock, at 1963 prices, plus litigation expenses, etc., defending against the injunction).

Thus the only remedy suggested by the Court of Appeals is illusory and non-existent. Yet petitioners so abstaining from ruining *all* their fellow savings depositors and their savings association is held to forfeit every other right ever to be heard on the merits.[42]

III.

The Equitable Rule of Laches Is Misused to Cause Injustice, Instead of to Prevent It.

The 1963 merger of Long Beach Federal-Equitable remained entirely "hypothetical" until *final* approval on September 4th and 5th, 1963 by *both* respondents Bank Board and California Savings and Loan Commissioner. The California Commissioner did not *finally* approve the merger until September 5, 1963. His first approval was on August 28, 1963. *It was conditional.* One of such conditions was that:

> ". . . . EQUITABLE shall make distribution . . . to the shareholders of LONG BEACH FEDERAL . . ., subject to the lawful orders of any court of competent jurisdiction . . ." [Pltf. Ex. 3-B-1].

This condition was approved by respondents Bank Board *et al.* (233 F. Supp. 578 at pp. 596-597, Appx. I).

The merger took place early Tuesday September 10, 1963. Three of the intervening days between Thursday September 5, 1963 and Tuesday September 10, 1963

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[42]See footnote 45, pages 40-41 hereof.

were holidays (Saturday, Sunday, and Monday, California Admission Day). Thus, but a *single* business day intervened between the time the merger ceased to be "hypothetical" and the class actions were filed to test the validity of the stock distribution.

The Court of Appeals' opinion which says at page 19, petitioners:

> ". . . had from at least the middle of June, 1963, until September 10, 1963, when the merger was consummated, within which to institute litigation seeking to enjoin the merger . . ."

is contrary to the record, and *Fahey v. Mallonee,* 332 U.S. 245, 91 L. ed. 2030 (1947).[43]

Petitioners had but one business day, Friday September 6, 1963 in which to have tried to enjoin the merger.

No trial of the factual issues of laches was held. The Court of Appeals, despite the conflict in the record and affidavits, decided this issue as a matter of law.

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[43]More than twenty years ago Long Beach Federal savings depositors, through their same depositors' protective committee, in this same litigation against the predecessor of this same Bank Board, enjoined a then threatened merger of their association *before* it could take place. This Court held such injunction was premature, and said in *Fahey v. Mallonee,* 332 U.S. 245, 91 L. ed. 2030 (1947) at U.S. page 257, L. ed. page 2041:

> ". . . The Government has assured us at the bar that there is no plan for such a merger in contemplation. Nevertheless, such a merger was enjoined . . . *we do not consider it necessary to discuss the legality of hypothetical mergers.*" (emphasis added).

It was in the light of this U.S. Supreme Court decision in the prior years of this same litigation, that *all* parties including petitioners and respondents, agreed that the court test of the merits or validity of the merger "or any part thereof" would take place *after* instead of *before* completion of the merger. Another "premature" attempt to secure judicial decision of the validity of the "hypothetical" merger was not contemplated after the 17 years of prior litigation (1946-1962).

This Court has repeatedly refused to permit mere lapse of time to block justice for oppressed minority stockholders.[44]

Rights of minority stockholders have been protected *after* merger.

In *J. I. Case Co. v. Borak*, 377 U.S. 426, 12 L. ed. 2d 423 (1964) minority stockholders sued to enjoin the merger of their corporation. The injunction was denied and the merger took place. Five years *after* the merger they were allowed to amend their complaints. (317 F. 2d 838 at 840). This Court affirmed and said at U.S. pages 433-434, L. ed. pages 428-429:

> ". . . It is for the federal courts 'to adjust their remedies so as to grant the necessary relief' where federally secured rights are invaded. 'And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, *federal courts may use any available remedy* to make good the wrong done.' (citing authorities)" (Emphasis added).[45]

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[44]In *Southern Pacific Co. v. Bogert*, 250 U.S. 483, at 488-490, 63 L. ed. 1099, at 1106-1107 (1919) this Court, 30 years after a merger, required compensation for minority stockholders wrongfully excluded therefrom. The action in which such distribution was ordered had not been filed until 22 years *after* the merger.

In *Northern P. R. Co. v. Boyd*, 228 U.S. 482, at 509, 57 L. ed. 931, at 944 (1913), a complicated railroad merger and reorganization took place. One creditor litigated for 26 years from 1887 to 1913. 10 years *after* the merger he brought his first action against the reorganized railroad which defended on the ground of laches. This Court held the 10 years of delay did not bar the enforcement of his claim.

[45]12 U.S.C. §1464(d) provides for such a "general right to sue." It says respondent ". . . Board shall be subject to suit by any Federal savings and loan association with respect to any matter under this section or regulations made thereunder, or any

See also:

1. *Schwabacher v. U.S.*, 334 U.S. 182 at 200, 92 L. ed. 1305 at 1317 (1948).

2. *Lebold v. Inland Steel Co.*, 125 F. 2d 369 at 375 (CA-7, 1941), [Cert. denied 316 U.S. 675, 86 L. ed. 1749 (1942)].

3. *Jones v. Missouri-Edison Electric Co.*, 144 Fed. 765 at 777 (CA-8, 1906).

4. *American Seating Co. v. Bullard*, 290 Fed. 896 at 901 (CA-6, 1923).

The California Savings and Loan Commissioner precluded pre-merger litigation by the terms of his stock permit and conditional approval of the merger.

Under his conditions Equitable stock could not be distributed until after it was issued. It could not be issued until *after* the merger.[46] When so issued it was to be distributed only ". . . subject to the lawful orders of

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other law or regulation, in the United States district court for the district where the home office of such association is located, . . .". (The legislative history of said section is discussed on p. 29 hereof.)

The Court of Appeals' comments in footnote 28 at page 17 of its opinion upon other possible remedies which the Court of Appeals says petitioners did not seek from the District Court, such as appraisal rights, or damages for conversion. But appraisal rights were expressly prohibited by the terms of the Merger Agreement dictated by respondent Bank Board, *et al.* (See petition for Certiorari by Intervenor Ross page 26 for discussion). And petitioners sued for declaratory relief and prayed for any equitable relief the court might deem just. Such would include damages for conversion.

[46]On August 30, 1963, the California Commissioner issued his stock permit [Pltf. Ex. 3-C-2] authorizing Equitable to issue its guarantee stock to Long Beach Federal savings depositors *only after* the merger. Said stock permit read in part on pages 1 and 3:

"*Authorization: Upon . . . consummation of the merger* in accordance with the provisions of the Order Approving Merger by the Savings and Loan Commissioner of the State

(This footnote is continued on the next page)

any court of competent jurisdiction . . .". Until the "merger was consummated" and stock was issued any litigation over its distribution would be premature and "hypothetical".

Long Beach Federal in 1946 enjoined a merger *before* it could occur. This Court reversed in 1947 and refused to decide the merits of "hypothetical" mergers. In 1963 Long Beach Federal sued *after* the merger. The Court of Appeals now refuses to consider the merits because of "laches" for not again suing prematurely to enjoin the merger.

All parties knew the Court test of distribution was to follow and not precede the merger.

The Proxy Statement mailed to all 60,000 Long Beach Federal savings depositors informed them that litigation in Court might prevent "any distribution whatsoever".[47] But the Proxy Statement did not say (and no one intended) that litigation might enjoin and prevent any *merger* whatsoever.

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of California dated August 28, 1963, Equitable Savings and Loan Association is authorized to issue 791,650 shares of its One Dollar ($1.00) par value guarantee stock to the withdrawable shareholder members of Long Beach Federal Savings and Loan Association. . . .

". . .

"No certificates of shares of guarantee stock shall be issued or sold or other acts done, pursuant to the authorization above set forth unless and *until . . . consummation of the merger. . . .*" (emphasis added).

[47] Said Proxy Statement read in part on page 5:

"The management of Long Beach is informed that certain shareholder-members may contest in court the validity of the foregoing participation plan insofar as it excludes from distribution rights part or all of their share account balances on November 30, 1962. . . .

"If all Long Beach members in a position to do so were to contest the plan of distribution, therefore, as much as 26% (205,829 shares) of the stock being paid by Equi-

IV.

Respondent Bank Board's Language "or Any Part Thereof" Was a Severance Clause Expressly Permitting a Court Test of "Any Part" of the Merger After the Merger Took Place.

The severance clause of the Merger Agreement is quoted at pages 7, 14 and 19 of the Court of Appeals' opinion:

> "This Agreement is not intended to prohibit any shareholder member of Long Beach from taking appropriate action to exercise such rights, if any, which he may have to contest the merits or validity of the plan of dissolution of Long Beach, *or any part thereof,* incorporated herein." (Emphasis added).

It is aptly stated by the Court of Appeals on page 19 of its opinion as ". . . the provision permitting a court test of the distribution provisions".

But, said Court's opinion erroneously, we believe, limits such "court test of the distribution provisions" to *only* a court test of the *entire* merger, *prior* to the merger.

This language permitting a court test of "*any part*" of the Merger Agreement originated with respondents Bank Board and Insurance Corporation.[48] Such lan-

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table might become involved in litigation which could prevent its prompt distribution. *Such litigation could* conceivably delay or *prevent any distribution whatsoever.*" (emphasis added) [Pltf. Ex. 7-A-4-3].

[48]The U.S. District Court so found in its opinion. In 233 F. Supp. 578 at p. 596, Appx. I the court found:

". . . The Bank Board proposed the language, and agreed to the insertion of the provision that the validity of *any part* of the Agreement could be contested. . . ." (Emphasis by the court)

No respondent has denied or contested this finding. See page 20 hereof.

guage is to be construed most strongly against those U.S. agencies who draft and originate it.[49]

Yet this language originated by respondents is now construed by the Court of Appeals as requiring that the *entire* merger *must* be enjoined *before* it occurs.

Respondent Bank Board by its own language expressly made the merger severable. "Any part" could be accepted. Any other part could be tested by the "provision permitting a court test" (CA-9 Opn. p. 19). No restriction was made as to when said "court test" of "any part" must be made.

What the parties expressly made separate and severable the Court of Appeals has re-written and made whole and indivisible.

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[49]The same Court of Appeals had so held in *R.F.C. v. Sullivan Mining,* 230 F. 2d 247 at 250-251 (CA-9, 1956). The Court said at pages 250-251:

> ". . . But the government in effect contends that the crucial clause of the 1944 amendment does not mean what it appears to say. . . . The 1944 agreement was written in its entirety by Metals Reserve. [A U.S. Government Agency] not by Sullivan, and its language, where ambiguous, is to be construed strongly against the author. See Restatement, Contracts, §236(d): 'Where words or other manifestations of intention bear more than one reasonable meaning an interpretation is preferred which operates more strongly against the party from whom they proceed, . . .'"

In *Krupp v. Federal Housing Administration,* 285 F. 2d 833 (CA-1, 1961) the First Circuit Court of Appeals said at page 836:

> ". . . these provisions are to be construed against the defendant [F.H.A.] which drafted them, . . ."

V.

The Court of Appeals Approves Retroactive Forfeitures of Thousands of Innocent Small Federal Savings Depositors' Statutory and Charter Rights Without Findings or Trial and Regardless of Their Guilt or Innocence.

Respondent Bank Board held no hearings nor did it take any testimony.

No savings depositor was ever given any notice *prior* to making his deposits that his new (or old) deposits would be denied their statutory and charter rights to equal and pro rata participation in their mutual association's net worth, surplus and reserves. (See pages 18-19 hereof) Bank Board's forfeitures were entirely retroactive and *ex post facto*.[50]

In its retroactive forfeiture orders said board made no specific findings of any individual guilt or innocence as to any one or more of the thousands of petitioner's innocent savings depositors it forfeited, or those it favored. Said board's only finding was:

> ". . . The Federal Home Loan Bank Board has determined that . . . said Merger Agreement . . . is advisable and in the interest of all concerned; and that the distribution . . . is fair and equitable;" [F.H.L.B.B. Order No. 17177 Pltf. Ex. 3-D-4].

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[50]Similar retroactive administrative orders have been held void and unenforceable by this Court and other Courts.

In *United States v. Baltimore & O. R. Co.*, 284 U.S. 195 76 L. ed. 243 (1931), this Court said at U.S. page 203, L. ed. page 247:

> ". . . . The Commission had no power to put this order into effect as of a prior day; . . . . Accordingly, the order did not become operative and was wholly ineffective."

To the same effect are:

Greene v. United States, 376 U.S. 149 at 160, 11 L. ed. 2d 576 at 584 (1964);

United States v. McCrillis, 200 F. 2d 884 at 889-890 (CA-1, 1952).

The District Court required an analysis of the size and status of each of the almost 1900 forfeited savings accounts. The District Court found (233 F. Supp. 578 at p. 599 Appx. I, footnote 4):

> ". . . 1,899 accounts [are] affected. Of that number, . . . 324 are $500.00 or less; 1524 are $11,000.00 or less; and only 54 are $100,000.00 or over. Thus, the greater number of *small account shareholders are punished* by the attempted deprivation than the larger shareholders. . . ." (emphasis added).

Respondents Bank Board, *et al.*, briefs and the Court of Appeals' opinion discussed only accounts of $20,000 or more per account. There are less than 150 of such accounts including the 54 over $100,000 each. But neither the Bank Board nor the Court of Appeals have mentioned or considered the punishment they impose on petitioners' thousands of innocent forfeited *small* savings depositors. Their federal statutory and charter rights to equal pro rata distribution are retroactively forfeited and taken from them without findings by the Bank Board and without discussion or consideration by the Court of Appeals.

It is not a crime or wrong, punishable by retroactive forfeiture, to be an innocent small co-depositor in a federal savings institution, with other larger depositors.[51]

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[51] 31.4% of *all* savings deposits in all savings and loan associations are in accounts of more than $10,000 each. There were more than 150,511 savings accounts of over $10,000 each in *only three* Los Angeles Associations. The total deposits in said 150,511 savings accounts exceed one and one-half billion dollars ($1,500,000,000). See page 14 hereof.

Petitioners asked the District Court for a *trial* on the merits. Instead, the District Court gave them a summary judgment.[52]

The Court of Appeals reversed. But instead of a remand for a trial on the merits it held "the District Court was without power to remedy what it regarded as an invalid distribution . . ." (CA-9, Opn. p. 17).

The final result is that the thousands of admittedly innocent small federal savings depositors are punished by retroactive forfeiture. Yet they have never been heard, or had any trial on the merits *anywhere.*

Respondent Bank Board expressly admitted that the small forfeited savings depositors have never been heard on the merits and will never be so heard.

Bank Board says ". . . Appellees cry out that the small depositors have never been heard on the merits. *This, of course, is true, . . .*" (emphasis added.)[53]

Respondent Bank Board made its retroactive forfeiture orders withiut any hearing or testimony.

The District Court set aside the forfeitures as illegal and void.

The Court of Appeals assumed the retroactive forfeitures were invalid but yet holds the District Court was without power to remedy them (CA-9, Opn. p.

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[52]Respondents provoked this summary judgment by failing to deny, as required by F.R.C.P. Rule 56, petitioners verified complaints and affidavits, exhibits, etc. The motions for summary judgment were then made by petitioners at the express order and direction of the District Court.

[53]Page 16 of respondent Bank Board's "Response of Federal Appellants To Appellee's Petition for Rehearing" filed December 26, 1967, pursuant to order of Court Appeals requiring such response.

20). It orders the actions dismissed and the invalid forfeitures enforced (CA-9, Opn. p. 21).

If the Court of Appeals' opinion stands, no U.S. Court can consider the punishment and penalties inflicted by Bank Board on thousands of innocent small federal savings depositors because of the alleged but untried wrongs of other larger depositors.

Forfeiture is punishment for a wrong or crime. To so punish the innocent without hearing or findings is a denial of due process of law and a violation of Amendment 5 of the U.S. Constitution.

Such "shotgun enforcement" of respondent Bank Board's vast powers cries out for judicial review. It should not be something "the District Court was without power to remedy . . ." (CA-9, Opn. p. 17).[54]

The Court of Appeals' opinion precludes all federal savings association depositors from any relief against the punishments and forfeitures of an illegal or void merger unless they sue and can enjoin the merger *before* it can take place. But such an injunction is impossible (see pages 36-38 hereof).

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[54]Respondents counsel at TR-122 referred to the large new savings depositors as "pickpockets." He later withdrew such epithet, but it discloses the attitude of Bank Board and their counsel.

In *Farmers v. United Electrical, etc.*, 211 F. 2d 36 (CA-DC, 1953) [Cert. Denied 347 U.S. 943, 98 L. ed. 1091], the N.L.R.B. denied all members of a labor union all their rights under the Labor Act. Such denial was solely because the Union's officers had not complied with a Board order. The D.C. Court of Appeals said at page 39:

> ". . . To impose this penalty upon the great mass of innocent union members is as reckless as firing a shotgun into a crowd of people in an attempt to stop one who is picking their pockets."

See footnote 9, page 9 for Bank Board Chairman's letter retroactively punishing innocent petitioners because they would not agree to said forfeitures.

The dangers of such holding are intensified by respondents 1966-1967 regulations.

Such present regulations authorize mergers without *any* prior notice to any of the thousands of mutual savings depositors in either of the merged federal savings associations.[55]

In the year 1966 at least twenty savings and loan associations ". . . were merged for supervisory reasons" (34th Annual Report of Federal Home Loan Bank Board to Congress for year 1966, page 80). Said report at pages 63-65 discusses 10 similar actions of respondent Federal Savings and Loan Insurance Corporation.

Bank Board mergers have taken place without any notice of any kind to any of the hundreds of thousands of mutual savings depositors in either of the merged federal mutual savings associations.[56]

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[55]12 C.F.R. Part 546 was amended by respondent Bank Board in 1966-1967. It now provides for mergers *without any notice* to the mutual savings depositors of the merged federal savings associations. 12 C.F.R. 546.2(d) and (e) now read:

"(d) Notwithstanding any other provision of this part, the Board *may, where it deems appropriate,* require that the plan of merger be submitted to the voting members of either or both associations at a duly called meeting or meetings and that the plan, to become effective, be approved by them.

"(e) A conservator or receiver appointed by the Board under Part 547 of this chapter may merge the Federal association in his possession with another association as provided in §§546.2 and 546.3 without submitting the plan of merger to the board of directors or to the members of the association for their approval." (emphasis added).

[56]In the Los Angeles-Long Beach, California area, on May 2, 1966, the $166,000,000 First Federal Savings and Loan Association of Alhambra was merged by respondent Bank Board into the $1,260,000,000 California Federal Savings and Loan Association. No prior notice of any kind of said merger was required to any of the thousands of First Federal Savings and Loan Association of Alhambra mutual savings depositors whose federal

(This footnote is continued on the next page)

Few, if any, of the twenty million people who are depositors in federal mutual savings associations in the United States know or realize that they *own* the seventy billion dollars of assets of their mutual associations. Nor do they know that their ownership includes their respective association's tens of millions of dollars of surplus and net worth.

Long Beach Federal depositors were more fortunate. Their vigilant depositors protective committee was active for 21 years. Such resulted in the $7,000,000 equal and pro rata distribution made to them in 1963 by the District Court and $2,500,000 more yet in Court to be distributed, or forfeited.

Respondent Bank Board has repealed the Acts of Congress which give all federal mutual savings depositors equal and pro rata rights.

In our Long Beach Federal merger the Board creates classes of forfeited and punished savings depositors and other classes who are favored and who take the forfeited shares of their fellow depositors.

Conclusion.

Innocence or guilt makes no difference.

Only Bank Board whim decides who among the innocent are punished by forfeitures and who are favored by receiving what has been forfeited. Only Bank Board whim decides whether the punished and forfeited

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mutual savings association thus disappeared. Nor was any notice required to the hundreds of thousands of California Federal Savings and Loan Association savings depositors who thus became the new co-owners of Alhambra Federal.

The last published Annual Financial Statement of First Federal Savings and Loan Association of Alhambra shows that it had net worth, reserves and surplus, of about $13,252,000 and total savings deposits of about $148,000,000.

The tens of thousands of First Federal Savings and Loan Association of Alhambra savings depositors owned their respec-

are innocent savings depositors of $100, $10,000 or $100,000 or more.

Under the Court of Appeals' opinion the U.S. Courts are "without power to remedy" such actions, unless the court judgments receive "Board and Commissioner approval".

Said arbitrary powers were denied to respondents by Congress in the Administrative Procedure Act and in the 1954 amendments to the "sue and be sued" sections of the Federal law creating respondent Bank Board. Yet nowhere does the Court of Appeals' opinion cite or discuss either of said statutes.

Respondents' forfeitures are repugnant to the United States Constitution Amendment Five and the repeated holdings of this Court. The writ should be granted to correct the dangerous precedent enshrining respondent administrative agencies as the supreme authority beyond all powers of the United States Courts and Congress.

Respectfully submitted,

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Attorney for Petitioner Elliott, et al., as the Shareholders' Protective Committee of Long Beach Federal Savings and Loan Association.

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tive equal pro rata shares of said surplus, etc. It amounted to about $13,252,000 (about 9% of their respective savings deposits). They might have been able to attain for themselves an $18,000,000 or greater bonus distribution. Petitioner Long Beach Federal had but $72,000,000 of savings deposits. It got a $9,500,000 bonus distribution thereon.